<u>LAWS OF ARREST</u> - <u>PART II</u> (On Line)

In Part II we'll discuss the following:

- 1) What is needed to do a vehicle stop?
- 2) Issues involving in a vehicle stop.

WHAT IS NEEDED TO DO A VEHICLE STOP?

We discussed Stops, Stop & Frisk, Investigatory Detention, and Arrest in Part I. Another area, with many legal questions, involves vehicle stops. The standard for stopping a vehicle is the same as that of stopping a person: REASONABLE SUSPICION.

Introduction

There are many questions – and a lot of case law – about what happens on a vehicle stop. We will address the following questions.

- Reasonable suspicion to stop a vehicle.
- Pretext stops.
- At what point does someone become guilty of concealing ID?
- Are there guidelines about asking for ID on a vehicle stop?
- What happens if we stop a vehicle in another jurisdiction?
- What about a stop based upon a "wanted flyer" from another jurisdiction?
- Can a vehicle be stopped based upon an anonymous tip?
- What about the community caretaker exception?
- What's involved in a DWI checkpoint?
- Is there a limit as to what questions an officer can ask at a vehicle stop?
- When is an officer in "uniform?"

Reasonable suspicion to stop a vehicle

A Sheriff's deputy in Dona Ana County stopped a vehicle because he couldn't see the expiration date on a renewal sticker. The sticker was blocked by a silver frame placed around the license plate. Court of Appeals said this was sufficient reasonable suspicion to stop the vehicle. NMSA 1978, Section 66-3-18(A). <u>State v. Jacquez</u> (2009).

FACTS:

On patrol, an Albuquerque police officer ran a license plate of a vehicle in front of him. When he learned the owner had a suspended driver's license, he stopped the vehicle. Approaching the vehicle, he quickly realized (from previous encounters) that the driver was not the owner of the vehicle. There was an odor of marijuana from the vehicle. Consent was given to search and illegal drugs were found. State v. Candelaria (2010).

• Good stop (yes) Good search (yes)

ANSWER:

Unless there are facts to the contrary, it is reasonable to conclude a driver of a vehicle is the owner of a vehicle. There was reasonable suspicion to stop the vehicle. Once a vehicle has been validly stopped, for whatever reason, an officer may request a driver's license. This is true even though the reasonable suspicion for the stop (example: the owner is not the driver) no longer exists. Court of Appeals held that evidence seized was admissible.

Pretext stops

FACTS:

An agent of the Pecos Valley Drug Task Force saw the driver of a vehicle leaving a drug trafficking residence with no seat belt on. He asked a uniformed officer to stop the vehicle in order to ID the driver and inquire about activities at the residence. Once stopped, drugs were found, and the driver was arrested.

• Can a police officer use a valid traffic stop as a pretext (excuse) to get ID from an occupant of that vehicle? (no)

ANSWER:

Court of Appeals said no. They noted that the purpose of a pretext stop is to conduct a criminal investigation unrelated to driving. While there may have been reasonable suspicion for the stop (seatbelts), there was only a "hunch" – less than reasonable suspicion – to investigate the real reason for the stop, drug trafficking.

Another concern was selective enforcement. Traffic violations are so common officers have to decide which ones to enforce. This discretion is permitted as long as police officers enforce traffic laws with reasonable suspicion, in good faith, and <u>for that purpose</u>. But there isn't good faith in a pretext stop; the agent wasn't really interested in a seat belt violation. <u>State v. Ochoa</u> (2008).

NOTE: The federal government generally supports pretext stops.

At what point does someone become guilty of concealing ID?

NMSA 1978, Section 30-22-3. Concealing Identity

- Concealing Identity consists of concealing one's true name or identity, or disguising oneself with intent to intimidate, hinder or interrupt any public officer or any other person in a legal performance of his or her duty or the exercise of his or her rights under the laws of the United States or of this state.
- PENALTY: Petty Misdemeanor

FACTS:

State Police stopped defendant for speeding. Defendant gave his full name but did not produce a driver's license. He refused to give his address, DOB, and SS number. He was convicted of Aggravated DWI, Concealing ID, and other charges. He argued on appeal that the concealing ID conviction was invalid because he gave his full name to officers.

- Was giving only his name sufficient?
- Was the driver required to give additional information?

ANSWER:

Court of Appeals affirmed conviction. Identity is not limited to a name alone. The use of the word $\underline{\text{or}}$ (name or identity) indicates that failure to give either name or identity may violate the statute.

A New Mexico driver must carry a driver's license and exhibit it upon demand. NMSA 1978, Section 66-5-16. The license must contain name, DOB, and NM residence address. Section 66-5-15. Therefore, in an otherwise valid traffic stop, drivers have no reasonable expectation of privacy in their driver's license or the information contained therein. <u>State v. Andrews</u> (1997).

FACTS:

A UNM police officer saw a Dodge pickup with a camper shell parked on UNM property. A permit was required to park there but the vehicle had neither a license plate nor a UNM parking sticker. She saw Defendant in the camper, lying in bed reading.

She asked Defendant for ID but he refused. Her Sergeant came to assist but Defendant would only give his last name. A third officer came and Defendant finally gave his full name. In addition to criminal trespass, Defendant was also charged with Concealing ID. <u>State v. Dawson</u> (1999).

- Is Concealing ID an appropriate charge? (yes)
- Is delay in giving ID to a police officer the same as concealing ID? (yes)

ANSWER:

The Court of Appeals held that section 30-22-3 requires a person to furnish identifying information immediately upon request or, if the person has reasonable concerns about the validity of the request, so soon thereafter as not to cause any "substantial inconvenience or expense to the police." The delay cannot serve to "hinder" or "interrupt" police officers.

Are there guidelines about asking for ID on a vehicle stop?

• The following cases point out the need to articulate reasonable suspicion prior to detaining someone. If we don't have reasonable suspicion, or are unable to articulate it, what is seized may be inadmissible.

Stop - ID request of a person in a parked vehicle

Facts:

An officer in Lovington, New Mexico was looking for Mr. Contreras who had outstanding felony warrants. Arriving at his residence, the officer saw a vehicle parked in front, with a man in the front driver's seat. The man was talking to a lady who was leaning from the passenger side into the vehicle. It was about 10:00 o'clock at night.

He pulled in behind the vehicle. No emergency lights were used. He approached the

vehicle and realized, based upon previous encounters, that it wasn't Mr. Contreras. Instead, it was Mr. Williams, the defendant. He requested ID and found that defendant had a warrant. Upon arrest, and a search of the vehicle, drugs were found. <u>State v. Williams</u> (2006).

- When an officer requests ID, he is detaining a person (the person isn't free to leave).
- Police officers need reasonable suspicion to stop and detain citizens.
- If we stop someone to ask for ID, without reasonable suspicion, the stop will be invalid and anything found from the stop will be inadmissible.
- Will the drugs be admitted into evidence?

ANSWER:

Prior to requesting ID, prior to detaining this person, the officer did not suspect criminal activity. The only fact concerning defendant was that he was present in front of a house. Without more, without reasonable suspicion to suggest he was involved in criminal activity, the officer improperly detained him when asking for ID. Court of Appeals held evidence was inadmissible.

Vehicle Stop - Requesting ID from passengers on a traffic stop

Facts:

Late at night a Ruidoso police officer saw a car drive into a parking lot of a closed business. There were four occupants, including Patterson, who was sitting in the front passenger seat. There had been several burglaries in the neighborhood. The officer asked for ID of all occupants to see "who he was dealing with" and to assist him if there were burglaries later that evening. As Patterson was getting out of the car, he was observed hiding drugs. <u>State v.</u> Patterson (2006).

Facts:

In San Juan County an officer observed a car pull into a parking lot about 150 yards before a DWI roadblock. There were three occupants in the car, including Swanson who was in the front passenger seat. Each person was asked for ID and patted down. On Swanson the officer found drugs and paraphernalia. <u>State v. Swanson</u> (2006)

• Will the drugs seized in these cases be admissible? (no)

ANSWER:

State lost both cases! A person can be detained when there is "a suspicion that the law has been or is being violated." But to detain someone, where the person is not free to leave, there must be an individualized reasonable suspicion that the person is involved in criminal activity.

Mere presence, however, is not enough to show an individualized reasonable suspicion that a person is involved in a crime. Court of Appeals noted that the State was unable to articulate facts concerning either Patterson or Swanson sufficient to indicate individualized reasonable suspicion that they were violating the law.

Vehicle stop: Passenger

Facts:

Shortly after midnight, in Chaves County, an officer stopped a vehicle for a faulty license plate light. Asking for ID from the driver was proper but what about the passenger? There was no suspicion that the passenger was involved in criminal activity (or armed or dangerous) but the officer asked him for his ID. After doing a warrants check, he learned that the passenger had a warrant. Upon arrest, and while doing a pat down, the officer found meth and drug paraphernalia. State v. Affsprung (2004).

• Was it appropriate to ask the passenger for his ID? (no)

ANSWER:

Even though the officer was pleasant and the passenger voluntarily provided information, the passenger was being detained. To run the license through warrants meant continued detention. For continued detention there must be reasonable suspicion that the passenger had been or was engaged in additional criminal activity.

With no suspicion, much less reasonable suspicion, regarding criminal activity on the part of the passenger, the officer had no legitimate basis to ask for ID for the purposes of checking for a warrant. Evidence seized was inadmissible.

<u>Vehicle stop:</u> <u>Owner-passenger</u>

Facts:

Albuquerque police officer made a routine traffic stop but the driver became frustrated and confused when asked for registration and insurance. The passenger, sitting in the front passenger seat, stated it was his vehicle. The officer asked the owner-passenger for ID, did a computer check, and found he had a warrant. An inventory search resulted in the seizure of cocaine. State v. Rubio (2006).

- Was asking for ID and doing a warrants check on the passenger lawful? (yes)
- Will the drugs seized be admissible?

(yes)

ANSWER:

As the owner of the stopped vehicle, Defendant, although a passenger, was responsible for assuring that the vehicle was properly registered and insured. It was reasonable for an officer to turn to the owner-passenger for answers. Court of Appeals held evidence was admissible.

Lesson Learned

After going over all the previous cases, it should be evident that officers are not to request ID from passengers for the purpose of looking for warrants. Other factors, however, such as a passenger trying to hide something could be a basis for asking for ID.

Concealing ID - Obstructing

Facts:

Roswell police were advised that a vehicle not belonging to anyone in the neighborhood had been parked in front of a house for thirty minutes. It was late at night, 11:30 p.m., when an officer observed two males in the vehicle. Because of recent burglaries, he asked both people for ID. The driver was cooperative. The passenger gave his name and address but refused to give the officer his ID. He was charged with obstructing. State v. Hudson (2007).

• Was the officer correct arresting the passenger for obstructing? (no)

ANSWER:

The officer had a generalized suspicion about the situation. But he didn't have an individualized reasonable suspicion that Defendant was committing or had committed a crime. The two subjects were sitting in a car, legally parked, and not involved in any criminal activity.

In a situation like this, where the individual refuses to provide identification, and no individualized reasonable suspicion exists, that's the end of the story. We cannot charge concealing ID or obstructing an officer. Conviction reversed.

What happens if we stop a vehicle in another jurisdiction?

Vehicle stop: Fresh pursuit

Facts:

A Los Alamos police officer observed defendant driving in an erratic manner. The officer turned on the emergency lights. At first it appeared defendant would pull over approximately one-half mile from the Los Alamos-Santa Fe County Line. Defendant, however, continued to drive and stopped one-half mile beyond the county line, in Santa Fe County. The officer determined that defendant was DWI and arrested him. Los Alamos v. Johnson (1989) and Los Alamos v. Tapia (1990). Is this a good stop?

- NMSA 1978, Section 31-2-8 gives officers authority to arrest a misdemeanor fresh pursuit traffic violation.
- "Fresh pursuit" means the pursuit of a person who has committed a misdemeanor in the presence of the pursuing officer.

ANSWER:

Supreme Court of New Mexico said the stop was good.

Vehicle stop: Venue

Facts:

A police officer in Santa Fe County clocked a car speeding and chased after it. When the vehicle pulled over, it had just crossed over the county line and was in Rio Arriba County. Defendant had an outstanding warrant and was arrested. During an inventory search, the officer found cocaine, heroin, and drug paraphernalia.

The officer chose to file charges in Santa Fe County. Defendant argued charges should have been filed in Rio Arriba County where the drugs were found. <u>State v. Roybal</u> (2006).

• Did the officer choose the correct venue (location)?

ANSWER:

Venue – where a case is going to be heard – is an important part of every case. Court of Appeals held that venue was proper in Santa Fe County. NMSA 1978, Section 30-1-14 states that a trial can "be held in any county in which a material element of the crime was committed." Possession of drugs is a "continuing offense" which occurred in each county through which Defendant traveled while in possession of drugs.

<u>Vehicle Stop</u>: <u>Fresh Pursuit</u> (Reservation)

Facts:

Defendant was speeding when a San Juan County Sheriff's deputy saw him. He turned on his emergency equipment but Defendant drove one-third of a mile into the Navajo reservation. Because Defendant was a member of the reservation, tribal police were called, but they were unavailable. The deputy wasn't cross-commissioned. He gave the Defendant field tests and let him walk home. <u>State v. Harrison</u> (2010).

- What, if anything can the deputy do?
- What if the Defendant is DWI?

ANSWER:

It has been long standing legal doctrine that state and local law enforcement have no authority over tribal members on Indian lands. But in a departure from this principle, under circumstances like these, and as long as it doesn't infringe on tribal procedure, an officer can do a limited investigation of an Indian. Results of the field test were admissible.

The officer can make an arrest if the subject is a non-Indian. If the subject is an Indian, no arrest can be made.

What about a stop based upon a "wanted flyer" from another jurisdiction?

• A stop may be based upon a "wanted flyer" issued by another department, so long as the issuing department possessed a reasonable suspicion justifying the stop.

<u>United States v. Hensley</u> (1985).

But there must be reasonable suspicion to justify a detention . . .

News item:

Mr. Martinez was accused of mailing three packages bombs but was cleared after going to trial in the 1980's. He was placed on the FBI terrorist watch list. In 2005 he was handcuffed, put in a police car and held for an hour while the state police conferred with the FBI after being

pulled over a few miles north of Santa Fe, New Mexico. State Police and others were found liable (he was given \$106,000) because he was detained without reasonable suspicion that he had committed a crime or was a terrorist. Albuquerque Journal, July 6, 2007.

Can a vehicle be stopped based upon an anonymous tip?

Facts:

Tucumcari Police received an anonymous tip at approximately 4:30 p.m. that (1) a Hispanic male with a long black ponytail would be transporting cocaine from Albuquerque to Tucumcari, (2) driving a green, older model Ford Econoline van, (3) heading from the direction of Albuquerque toward Tucumcari, and (4) arriving in Tucumcari at about 10:30 p.m.

A deputy went to 1-40 and saw the vehicle heading toward Tucumcari. The time was 10:14 p.m. He stopped the vehicle and had the Defendant get out. Suddenly, the Defendant took off running. Cocaine was found in the area where the Defendant might have thrown it. He was convicted of possession of cocaine. Did the deputy, based upon an anonymous tip, have reasonable suspicion to make the stop? Did the tip have sufficient corroboration? (yes)

ANSWER:

Supreme Court was impressed that the anonymous tip was able to predict Defendant's future behavior. This suggests the caller had inside information. It is reasonable that a person with access to such information is likely to have access to reliable information about the defendant's activities. State v. Urioste (2002)

Facts:

In Dona Ana County deputies stopped a vehicle based upon an anonymous tip of a possible drunk driver who was driving a grey van, towing a red GEO, and driving erratically. The driver was charged with Aggravated DWI. No erratic driving was observed by the deputies. State v. Contreras (2003). Is this a valid stop? (yes)

ANSWER:

Yes. Dispatch gave sufficient information to find the vehicle. A tip is far more reliable if it can be shown there was personal observation. Based upon the facts given, one could infer that the caller was an eyewitness.

Dispatch operators and officers are encouraged to record the names of concerned callers and obtain as many facts as possible to determine the reliability of each caller.

What about vehicles and the community caretaker exception?

Officer was driving a motorcycle on Eubank Boulevard, a multi-lane street in Albuquerque. He was weaving from the right side of his traffic lane to the left side in a continuous pendulum-type movement. His motorcycle was leaning from side to side during the weaving.

An officer stopped him. There was no reasonable suspicion that the offender had committed or was committing a crime. Officer stopped the offender because of concern for the offender's welfare. The offender was DWI and arrested for it. Apodaca v. State (1994).

• No reasonable suspicion? Is there a basis for the stop?

ANSWER:

Court of Appeals held that a peace officer may stop a vehicle for a specific, articulable safety concern, even in the absence of reasonable suspicion that a violation of the law has occurred or is occurring. Such a stop is justified by the officer's role as a community caretaker. Conviction affirmed.

Facts:

Interstate 10, Southern New Mexico. A state police officer observed a small pickup truck, traveling at night, with its emergency lights flashing. He saw three men riding on the tailgate, their feet hanging close to the ground. Concerned for their safety, he stopped the truck.

He approached the truck and asked for a driver's license, registration, and proof of insurance. The driver only has a license. Investigation revealed the truck was stolen.

• After a valid safety stop, is it permissible to detain driver for the purpose of requesting ID, registration, and proof of insurance?

ANSWER:

Supreme Court said there was no search here. To be a "search," the object must be something in which a person has a reasonable expectation of privacy. New Mexico requires a driver to produce such documentation upon demand by a peace officer. There was a seizure - asking for documents - but it was reasonable. <u>State v. Reynolds</u> (1995).

CHECKPOINTS AND ROADBLOCKS

What's involved in a DWI checkpoint?

A DWI roadblock is an exception in that a motorist can be "seized" without reasonable suspicion that a crime has occurred. Many states have held roadblocks to be unconstitutional. Roadblocks have been approved in New Mexico as long as they are reasonable. The Court of Appeals provided eight guidelines to consider in determining the reasonableness of a DWI roadblock. City of Las Cruces v. Betancourt (1987). These guidelines follow:

- role of supervisory personnel.
- restrictions on discretion of field officers.
- safety.
- reasonable location.
- time and duration of roadblock.
- indicia of official nature of roadblock.
- length and nature of detention.
- advance publicity.
- These guidelines are for <u>DWI</u> checkpoints only.

Does evading a DWI checkpoint create reasonable suspicion to stop a vehicle? (yes)

San Juan County Sheriff's Department set up a DWI checkpoint between Farmington and Aztec, New Mexico. Just before the checkpoint, Defendant made a legal U-turn and began traveling in the opposite direction. She was stopped for suspected DWI. After failing the field and breath tests, she was arrested for DWI.

Was there reasonable suspicion to stop the vehicle? <u>State v. Anaya</u> (2009). Answer:

A legal turn alone isn't reasonable suspicion. But here we have more: a person, aware of an upcoming checkpoint, deciding to drive in a different direction. These facts provided reasonable suspicion that the driver was DWI.

These stops will be decided on a case-by-case basis. Supreme Court noted that permitting drivers to avoid checkpoints, without consequences, would defeat the purpose of checkpoints. Conviction affirmed.

Are checkpoints/roadblocks permitted to search for drugs or weapons? (no)

Checkpoints are permitted only if authorized by the courts or by state statutes. There is no authorization for checkpoints or roadblocks to search for pornography or drugs or weapons.

- An example of a valid checkpoint/roadblock would be when exigent (emergency) circumstances exist. Example: escaped convict.
- Game and Fish also have an exception, NMSA 1978, Section 17-2-19.
- Conservation officers may . . . establish . . . checking stations at points along established roads . . . or roadblocks, for the purpose of detecting and apprehending persons violating the game and fish laws . . .
- Checkpoints are permissible to ask for driver's license, registration, and proof of insurance. <u>State v. Ruud</u> (1977), <u>State v. Bates</u> (1995).

Is an roadblock seeking information about a crime permissible?

US Supreme Court said an informational roadblock that sought the assistance of motorists in the area of a hit and run fatality was constitutional. <u>Illinois v. Lidster</u> (2004).

Lesson Learned

We need reasonable suspicion to stop a vehicle. However, there are at least two exceptions to this legal requirement: (1) community caretaker and (2) roadblocks.

Is there a limit as to what questions you can ask on a vehicle stop?

• Questions concerning ID have already been discussed. The following includes additional questions asked during a traffic stop.

Sometimes an officer asks questions at a routine traffic stop that leads to the seizure of

contraband. One surprise for officers is to find that it was "one question too many" and the evidence is suppressed. Officers may have to justify and articulate why certain questions are asked. The following situations provide some guidance in this confusing area.

FACTS:

Officer in San Juan County stopped Defendant's vehicle for littering. While doing a warrants check, he asked Defendant if he had any guns, alcohol, or illegal drugs in the car. It was a routine question: the officer did not have any basis to believe Defendant had contraband in his car. Defendant said no but gave consent to search his car. In a cigarette package the officer found several rocks of crack cocaine. <u>State v. Taylor</u> (1999).

- Are these questions appropriate? (no)
- Will the evidence be admitted? (no)

ANSWER:

The scope of an officer's activities during a valid investigatory stop is limited by the facts giving rise to the officer's reasonable suspicion. We would expect the officer to ask questions about littering and the traffic stop. But the officer went beyond the scope of the investigation in asking about illegal drugs and alcohol. These questions had nothing to do with the stop.

Lesson learned:

The scope and duration of a traffic stop may expand beyond its initial purpose if, and only if, a police officer has a 'a particularized and objective basis for suspecting the particular person of criminal activity.

<u>To articulate – to include a lot of details of why you do something – can have a positive impact</u>

A Quay County Deputy stopped Defendant for driving without a seat belt. It was a routine traffic stop and Defendant was requested to furnish his driver's license and registration. The deputy also asked Defendant if he had any weapons and conducted a pat down search. A vial of methamphetamine was located in one of Defendant's front pockets.

Generally, these questions would not be permitted and anything seized would be suppressed. But the officer in this case articulated some additional facts:

- Failure to make eye contact.
- Shaking hands.
- Unusual level of nervousness.

NOTE: Being nervous by itself is not unusual. Many people become nervous when stopped by a peace officer. But this person was extremely nervous. Defendant's conviction was affirmed.

Facts:

A state police officer stopped a car on State Road 26 (the Deming-Hatch bypass) for improper display of a temporary tag. He noticed several items in the car: a cell phone, a two-ton

car jack, an overnight bag, and the odor of raw gasoline. There were numerous problems with the bill of sale. The driver was very nervous, more than normal, and her hands were shaking. She seemed to be making up a story about the bill of sale as she went along. Asked about travel plans, the driver and passenger had different stories.

But now it gets interesting. To the driver: do you have any drugs in the car? Mind if I search the car? After consent, the officer placed a fiber optic scope in the gas tank and observed numerous plastic bags of marijuana. State v. Duran (2005).

• Did the officer articulate sufficient reasons to ask for consent to search? (yes)

ANSWER:

Because the officer sufficiently articulated facts that led him to ask for consent, the Supreme Court held that his actions and additional questions were proper.

Lesson learned:

If the response of the person being detained and circumstances give rise to suspicions unrelated to a traffic offense, an officer may expand an inquiry to satisfy those suspicions.

FACTS:

A Ruidoso Downs police officer stopped a vehicle involved in a possible forgery. A passenger in the front seat was the suspect. He was asked to get out of the vehicle. While being questioned, the officer found drugs on him, and he was arrested.

It's what happened next – two questions - that attracted the attention of the Supreme Court. The officer asked the driver if there was anything in the vehicle he needed to know about. Driver said no. The officer then asked for consent to search the vehicle. Driver agreed and the officer found meth. <u>State v. Funderburg</u> (2008).

- Were these two questions of the driver appropriate? (yes)
- Will the meth be admissible or will it be suppressed? (admissible)

ANSWER:

These questions were proper. The fact that an occupant of the vehicle had just been found with drugs provided the officer with a reason to believe more drugs might be found in the vehicle. It also helped that the officer was seeking to search the vehicle, not the driver, for drugs. Defendant's conviction was affirmed.

<u>Lesson Learned</u>: When asking for consent to search a vehicle for drugs, it is important to articulate reasons why you asked for consent.

FACTS:

Just prior to stopping Defendant for speeding, a Mesilla Deputy Marshal (near Las Cruces) observed Defendant lean to the right, as if hiding something under the front seat. His license was suspended. Another person was called to drive the vehicle.

The officer asked Defendant, "Before I turn this vehicle over to anyone else, is there anything in it that I need to know about? Are there any knives, needles, guns, or drugs?" Defendant said there was marijuana and gave consent to search the vehicle. Marijuana and meth were found. Are these questions appropriate? <u>State v. Leyva</u> (2011).

ANSWER:

New Mexico requires that questions on a traffic stop be related to the initial reason for the stop. Supreme Court held these questions were appropriate; the officer had reasonable suspicion (the furtive movements) that Defendant had hid an item in the vehicle.

Lesson learned:

Under federal law, the courts have a bright-line rule that allows an officer to ask any question on a traffic stop as long as the stop isn't extended or minimally so. The Supreme Court of New Mexico, using the state constitution, adopted a higher, more restrictive standard. Questions on a traffic stop must be related to the initial reason for the stop.

There are exceptions to this: Unrelated questions are permitted when supported by independent reasonable suspicion, for reasons of officer safety, or if the interaction has become a consensual encounter.

Vehicle Stops and Guns

Vehicle Stop – Guns

It was a routine stop and an officer walked up to a vehicle. A quick glance revealed a handgun on the back seat floorboard. It could be anywhere but this was Hobbs, New Mexico. The officer knew a person had a right to carry a firearm in their vehicle. Nothing had happened but the officer was concerned.

The driver and passenger were asked to step out of the vehicle. Neither was handcuffed or restrained. The firearm was seized and the ammunition was unloaded. Only one issue: did the officer have a right to seize the firearm? (yes) State v. Ketelson (2011).

ANSWER:

Supreme Court held an officer can temporarily remove a visible gun from a vehicle to prevent immediate access to it by an occupant during the short duration of a traffic stop. Such seizures, when balanced against officer safety, are minimal intrusions that do not interfere with any legitimate use of a firearm.

Lesson learned:

The decision was a result of Supreme Court's concern for officers on traffic stops. This is a rare case where an officer does not need to articulate or justify their action – the very brief, temporary removal of a firearm.

Recommend (unless there are other factors) not running the firearm or expanding the traffic stop into an investigation.

When is an officer in uniform?

Facts:

An officer, off-duty and wearing civilian clothes, was driving on a multi-lane road, Coors Boulevard, in Albuquerque, New Mexico. Suddenly, another car pulled up along beside him. The driver of the other car looked at the officer and then accelerated. The officer paced the other driver for about a mile, going at 70 miles per hour. Defendant was stopped at a point where Coors is posted at 45 miles per hour.

The officer retrieved his windbreaker from the back seat. The windbreaker had a cloth shield on the front and a patch on the shoulder, both of which had the words "Albuquerque Police" on it. Driver was cited for speeding.

Driver, a former police officer, argued that the stop was invalid because the officer was "not wearing a uniform clearly indicating his or her status" as required by NMSA 1978, Section 66-8-124 for a traffic stop. <u>State v. Archuleta</u> (1994)

Is this a valid stop? (yes) Was the officer in uniform? (yes)

ANSWER:

Court of Appeals noted that the question is whether there are sufficient facts that would lead a reasonable person to believe the person purporting to be a peace officer is a police officer. Conviction affirmed.

Facts:

Near Chimayo, New Mexico, two state police officers were in an unmarked vehicle, wearing BDU's. They wore black clothing and a black vest. An electronic device was attached to their vest. On their clothing were the words "STATE POLICE" and "POLICE." They also had an equipment belt with holster and gun and a metal police badge hanging from a pocket.

They made a traffic stop and arrested Defendant on a felony warrant. A search incident to arrest was done and drugs were found. But is a BDU (Basic Duty Uniform) a uniform?

ANSWER:

With all the uniforms officers have, Court of Appeals was reluctant to create a narrow definition of what a uniform should be. Instead, they asked whether a reasonable person would believe the person stopping him/her was a police officer. Court of Appeals held a reasonable person would believe an individual wearing a BDU with equipment was a police officer. State v. Maes (2011).

Some permissive actions during a vehicle stop

- 1. The driver may be removed from the vehicle.
- 2. The passengers may be removed from the vehicle.
- 3. The passengers may be ordered to remain inside the vehicle.
- 4. A flashlight may be used to illuminate the interior of the vehicle.
- 5. License, registration, and proof of insurance may be checked.

REASONABLE SUSPCION AND PROBABLE CAUSE

A reminder about reasonable suspicion and probable cause

- Need reasonable suspicion to stop and detain someone.
- Need reasonable suspicion a person is armed or dangerous to do a "pat down."
- Need probable cause to arrest someone.
- There are exceptions: community caretaker, protective custody, roadblocks.

CONCLUSION

We have discussed many topics regarding the Laws of Arrest.

- A stop of a person, a stop and frisk or an arrest is important to the person, to you, to the community.
- Knowing what the legal guidelines are will help us achieve success in our cases.